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Letter dated 14 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/386).

The Counter-Terrorism Committee has received the attached supplementary report from the Commonwealth of the Bahamas, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 4 April 2003 from the Permanent Representative of the Bahamas to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to refer to your letter dated 4 February 2003 regarding resolution 1373 (2001) and the initial report submitted by the Bahamas on 20 December 2001.

Please find enclosed the follow-up report requested by the Counter-Terrorism Committee (see enclosure).

I stand ready to provide any further information as may be required.

(*Signed*) Paulette A. **Bethel**
Permanent Representative

Enclosure

Report of the Government of the Bahamas pursuant to paragraph 6 of resolution 1373 (2001)*

Introduction

In order to comply with the provisions of Security Council resolution 1373 (2001), the Government undertook a comprehensive review of its legislation. A review of existing legislation indicated that The Bahamas has an effective regulatory regime, which would be able to detect and seize funds used in the financing of terrorist acts. However in order to be in full compliance with Security Council resolution 1373 (2001) and the International Convention on the Suppression of Terrorism domestic legislation is necessary.

A draft Anti-Terrorism Bill has been drafted and has been circulated to civil society and the financial sector for their comments. The Government of The Bahamas is of the opinion that this legislation should have the widest consultation before the same is debated and enacted by Parliament.

The draft legislation is in its final stages and it is anticipated that it would be tabled in the House of Assembly in April and passed after extensive discussion.

The Government of The Bahamas is committed to the objectives of the United Nations in its fight against terrorism and the financing of terrorists acts.

This Report is submitted to the Counter Terrorism Committee of the Security Council pursuant to paragraph 6 of resolution 1373 (2001), and outlines the actions taken by the Government of The Bahamas to implement the provisions of the resolution. This Report is supplemental to the Report submitted to the Counter Terrorism Committee on 20 December 2001.

PARAGRAPH 1: DECIDES THAT ALL STATES SHALL:

1(a) ***Prevent and suppress the financing of terrorist acts.***
The Government of The Bahamas is committed to ensuring that terrorists do not use The Bahamas to finance their terrorist acts. There is at present no legislation that deals with terrorism as a predicate offence. However in 2000 The Bahamas passed a compendium of legislation to, inter alia, regulate the financial services industry, establish a strict know your customer regime and provide for the reporting of suspicious transactions. While this legislation does not deal specifically with the suppression or financing of terrorist acts they may be used to assist the Government in identifying funds used in the financing of terrorism.

The legislation referred to is -
1. **The Financial Intelligence Unit Act** 2000, which establishes the Financial Intelligence Unit in The Bahamas. The Financial Intelligence Unit is the agency responsible for receiving, analysing, obtaining and disseminating suspicious transaction reports. By section 4 (2)(b) of the Financial Intelligence Unit Act, the Financial Intelligence Unit may upon receipt of any report of a suspicious transaction, order in writing any person to refrain from completing any transaction for a period not exceeding seventy-two hours. Further the Financial Intelligence Unit may upon receipt of a request from a Foreign Intelligence Unit or law enforcement authority including the Commissioner of Police of The Bahamas, order any person to freeze a person's bank account for a period not exceeding five days, if satisfied that the request is related to the proceeds of any of the alleged offences specified in the Second Schedule. The offences specified in Second Schedule are offences under the Proceeds of Crime Act 2000.

* The attachments are with the Secretariat and are available for consultations.

A Foreign Intelligence Unit includes those units, which are members of the Egmont Group, but also includes such body or bodies in another jurisdiction, which performs functions similar to those of the Financial Intelligence Unit.

Since the establishment of the Financial Intelligence Unit there have been four hundred and fifty (450) reports of Suspicious Transactions, which have been analysed and completed. Some of these reports have been forwarded to the Royal Bahamas Police Force for further investigation. There have been no reports related to the financing of terrorism.

The Financial Intelligence Unit became a member of the Egmont Group in June 2001 and cooperates with other foreign intelligence units in the exchange of information.

The Financial Intelligence Unit has issued six (6) Anti-Money Laundering and Suspicious Transactions Guidelines on 21 December 2001 for the following –

- Banks and Trust Companies;
- The Security Industry;
- The Insurance Industry;
- Cooperative Societies;
- Licensed Casino Operators;
- Financial and Corporate Service Providers.

2. **The Financial Transactions Reporting Act 2000** which provides for the verification of the identity of customers of financial institutions, the obligation to report suspicious transactions to the relevant authorities and the keeping and maintaining of records for at least five years. Financial institutions have been broadly defined to include -

- Banks and trust companies;
- A company carrying on life insurance business;
- A cooperative society;
- A friendly society;
- A licensed casino;
- A real estate broker;
- A trustee or administration manager or investment manager of a superannuation scheme;
- A mutual fund administrator or operator of a mutual fund;
- An investment manager;
- A counsel and attorney; or
- An accountant

Financial institutions also have an obligation to verify existing account holders. The deadline for the verification of existing accounts is 31 December 2003.

The Financial Transactions Reporting Act established the Compliance Commission, which is empowered to supervise financial institutions not regulated by another regulatory authority. These financial institutions would include trustees and administration managers, counsel and attorneys at law, accountants, real estate brokers, friendly societies and credit card companies. The Compliance Commission is also empowered to carry out on-site inspections to ensure compliance with the provisions of the Financial Transactions Reporting Act.

3. **The Financial Transactions Reporting Regulations 2000** set out the procedure for the verification of the identification of persons, corporate entities, partnerships or unincorporated businesses, verification of facilities established by telephone or internet, wire transfer records, continued verification of accounts, transfer and retention of records.

4. **The Financial Intelligence (Transactions Reporting) Regulations 2001** provides that every financial institution shall establish and maintain identification and record keeping procedures in compliance with the Financial Transactions Reporting Act and the Financial Transactions Reporting Regulations. As a part of the internal reporting procedures, every financial institution shall appoint a Money Laundering Reporting Officer who shall be registered with the Financial Intelligence Unit and to whom a report is to be made of any information or other matter which comes to the attention of an employee and which, in the opinion of that employee, gives rise to a knowledge or suspicion that another person is engaged in money laundering.

The Money Laundering Reporting Officer is required to disclose to the Financial Intelligence Unit, relevant agency or to a police officer, the information or other matter contained in a report, where the Money Laundering Reporting Officer knows, suspects or has reasonable grounds to suspect a person is engaged in money laundering. Additionally, the regulations provide for the appointment of a Compliance Officer who shall ensure that a regulated institution is in full compliance with the laws of The Bahamas. The regulations further make provisions for financial institutions to take appropriate measures for training of their employees at least once per year in the recognition and handling of transactions carried out by or on behalf of a person who is or appears to be engaged in money laundering.

A financial institution carrying on business without complying with the requirements of the regulations shall be guilty of an offence and shall be liable on summary conviction to a fine of $10,000; or on conviction on information- for a first offence to a fine of $50,000 and for a second or subsequent offence to a fine of $100,000.

5. **The Criminal Justice (International Cooperation) Act** which enables the Attorney General to provide assistance to other countries in connection with investigations, inquiries and proceedings in criminal matters where there is no treaty arrangement with The Bahamas and any other country.

6. **The Proceeds of Crime Act, which empowers the Police and Customs to search and seize,** and the Courts to confiscate the proceeds of crime. This Act makes provisions for the seizure and confiscation of the proceeds of criminal conduct which includes drug trafficking offences or offences under the Prevention of Bribery Act, money laundering offences, any offence which may be tried on information in The Bahamas or an offence committed anywhere that, if it had occurred in The Bahamas, would constitute an offence in The Bahamas. Applications may be made to the court for restraint orders to prohibit any person from dealing with any property subject to confiscation. As terrorist offences would normally involve the commission of one or the other of the predicate offences for the purposes of this Act, the Act gives the law enforcement authorities some scope to comply with the provisions of Security Council resolutions.

7. **The International Business Companies Act 2000** provides for the elimination of bearer shares and where bearer shares have been issued these shares are to be recalled and substituted by registered shares. Additionally, all persons incorporating international business companies have to be registered under the Financial and Corporate Service Providers Act 2000.

The register to be maintained by international business companies must contain the location in The Bahamas of the registered agent and the registered office and the names and addresses of the directors and officers of the company. The registered agent must also maintain a register containing the names and addresses of the beneficial owners of the company.

In this way financial institutions would not have a difficulty complying with the new KYC rules with respect to an international business company.

8. **The Financial and Corporate Service Providers Act 2000** provides for the registration and regulation of financial and corporate service providers by the Inspector of Financial and Corporate Service Providers. Financial and corporate services has been defined to include the conduct or the carrying on of financial services in or from The Bahamas including on-line financial services, the registration of management or administration of international business companies, the provision of registered agent and registered office services for international

business companies, the provision of officers or director of international business companies, the provision of nominee shareholders for international business companies, the provision of partners for partnerships registered and existing under the Exempted Limited Companies Act and the provision of registered agent services and registered office services under the Exempted Limited Partnership Act.

Under this Act the licensee has the obligation to obtain from each client who instructs him, details of the clients principal place of business, business address, telephone facsimile, telex numbers and electronic address of the principals and professionals concerned with the client along with two sources of reference to provide adequate indication of the reputation and standing of the client. Additionally, the financial and corporate service provider shall keep a record of each client, including the name and address of the beneficial owners of all international business companies incorporated or existing under the International Business Companies Act and the names and address of all partners registered under the Exempted Limited Partnership Act. Financial and corporate service providers licensed under the Act must also comply with the provisions of the Financial Transactions Reporting Act 2000.

The Inspector of Financial and Corporate Service Providers has the duty on an annual basis and when required by the Minister responsible for companies, at the expense of the licensee, to conduct on-site and off-site examinations of the business of the licensee for the purpose of satisfying himself that the licensee is in compliance with the provisions of the Act, the International Business Companies Act and the Financial Transactions Reporting Act. Where the Inspector is unable to conduct an examination he has the power to appoint an auditor at the expense of the licensee to conduct such examination and report to the Inspector.

At present there is no provision in The Bahamas that deals specifically with the suppression and financing of terrorist acts. There are, however, other pieces of legislation that may be used to deal with the suppression of terrorism and the financing of terrorism.

(i) **The Penal Code** Chapter 48 provides for the crimes of murder, threats of death or grievous harm, kidnapping, unlawful training, military operations, violence against judges, magistrates, jurors and witnesses in legal proceedings and causing damage to property, i.e. arson, the use of explosive matter with intent to cause damage and damage to buildings.

(ii) **The Internationally Protected Persons** Act Chapter 79 gives effect to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents adopted by the United Nations General Assembly in 1979.

(iii) **The Suppression of the Taking of Hostages Act** gives effect to the Convention against the Taking of Hostages adopted by the United Nations in 1979.

(iv) **The Firearms Act, The Explosives Act and the Explosive Substances (Illegal Use and Possession) Act** deals with the manufacture, importation, sale, storage, use, disposal of and possession of ammunition and explosives in The Bahamas.

(v) **The International Obligations (Economic and Ancillary Measures) Act 1993** enables the Governor General, for the purpose of implementing a decision, resolution or recommendation of an international organization or association of states of which The Bahamas is a member that requests its members to take economic measures against a foreign state, or where the Governor-General is of the opinion that a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis, to make orders or regulations relative to the prohibition or restriction of activities.

As an interim measure the International Obligations (Economic and Ancillary Measures) Act was used by the Government of The Bahamas immediately after 11 September 2001 to make provision for the seizure and confiscation of funds of persons suspected of terrorism and terrorist acts. Pursuant to the International Obligations (Economic and Ancillary Measures) Act 1993, the Governor General, on 25 September 2001,

executed **the International Obligations (Economic and Ancillary Measures)(Afghanistan) Order 2001**. (S.I. No. 139 of 2001).

This Order prohibited the sale or supply of goods to Afghanistan; the provision of financial services to or any business with Osama Bin Laden and the al Queda Organization or any individuals or entities associated with them. The Order also freezes any accounts held in the name of Osama Bin Laden, the Al Queda organization or any person or organization associated with them, as designated from time to time by the Attorney General, after consultation with the Governor of the Central Bank of The Bahamas and the Director of the Financial Intelligence Unit.

The Attorney General, after consultation with the Governor of the Central Bank and the Director of the Financial Intelligence Unit has issued four notices under the International Obligation (Economic and Ancillary Measures) Order. These notices were issued on 27 September 2001, 16 October 2001, 12 November 2001 and 15 November 2001.

As a result of the notices being forwarded to the financial institutions, three accounts totalling in excess of US$ 32 million were frozen as a protective measure because of the similarity of names of alleged terrorists appearing on the lists.

During the week of 22 October 2001, a team from the United States of America comprising officials from the Federal Bureau of Investigation, the Financial Crimes Enforcement Network, the Internal Revenue Service, the Secret Service, the Federal Reserve Bank and the United States Customs visited The Bahamas and assisted in the investigation of the source of the $32 million. As a result of the investigation, it was determined that none of the funds were connected to any of the terrorists named on the lists and the funds were released.

The Office of the Attorney General has recently completed a re-draft of an Anti-Terrorism Bill. The long title of this Bill is an Act to implement the United Nations Convention on the Suppression of the Financing of Terrorism, the United Nations Security Council resolution 1373 (2001) on Terrorism and generally to make provision for Prevention and Combating Terrorism. This Bill creates the offence of providing financial and other related services for the commission of a terrorist act and the offence of the use of property directly or indirectly in whole or in part for the purpose of committing or facilitating the commission of a terrorist act.

The draft Anti-Terrorism Bill makes consequential amendments to the Proceeds of Crime Act, the Financial Intelligence Unit Act and the Extradition Act.

An earlier draft referred to as the Terrorism Bill was circulated to civil society as well as financial institutions, attorneys, accountants and bankers for their comments. As a result of the comments received a new draft was prepared and has again been forwarded to civil society et al for their further comments.

This draft Bill amends the Proceeds of Crime Act and the Financial Intelligence Act to include an offence under the Anti-Terrorism Act in the Schedule of offences of both Acts.

A copy of the draft Anti-Terrorism Bill is attached to this report.

1(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used or in the knowledge that they are to be used in order to carry out terrorists acts.

The Financial Transactions Reporting Act 2000 and the Financial Transactions Reporting Regulations imposes an obligation on financial institutions to verify the identity of facility holders before that person becomes a facility holder. All existing facility holders have also to be verified. The time for verification of the identity of existing facility holders have been extended to 31 December 2003. In verifying the identity of the facility holder the financial institution must be supplied with the name and address of the facility holder and where the facility

holder is a company the names and addresses of the shareholders, beneficial owner, officers and directors of the company. The regulations also provide for the financial institution to be advised of the source of funds and the intended activity of the account.

The financial institution also has an obligation where the financial institution knows or suspects or has reasonable ground to suspect that the transaction or proposed transaction involves proceeds of criminal conduct as defined in the Proceeds of Crime Act, the financial institution shall, as soon as practicable after forming that suspicion, report that transaction to the Financial Intelligence Unit. The Schedule of the Proceeds of Crime Act defines relevant offence inter alia, as an offence which may be tried on information in The Bahamas other than a drug trafficking offence; of any offence committed anywhere that if it had occurred in The Bahamas, would constitute an offence as set out in the schedule.

The offences of murder, conspiracy to murder, taking hostages, use of explosives etc would all come under this provision.

1(c) Freeze without delay funds and other financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons and entities.

The International Obligations (Economic and Ancillary Matters) Act provides for the freezing and confiscation of funds of any person named in the Order of any Notices made under the Act.

Additionally, under the Financial Intelligence Unit Act, the Financial Intelligence Unit has the power to order the production of documents and to freeze a bank account for three (3) days and then a further five (5) days upon receipt of a request from The Royal Bahamas Police Force or a foreign law enforcement authority if it is suspected that the account may contain the proceeds of crime. This power is exercisable by the Financial Intelligence Unit without recourse to a court or judicial authority. This power of the Financial Intelligence Unit was challenged in the **Financial Clearing Corporation v the Attorney General** in 2001. At first instance the Supreme Court held that paragraphs (b) and (c) of section 4 (2) of the Financial Intelligence Unit Act were unconstitutional. The court also held that the Financial Intelligence Unit couldn't require the disclosure of banking information from a financial institution without a court order.

The Attorney General appealed this matter and in July 2002 the Court of Appeal allowed the appeal, giving its reasons in October 2002. The Court of Appeal held that the Financial Intelligence Unit's ability to issue freeze orders pursuant to section 4 (2) (b) and (c) of the Financial Intelligence Unit Act was not unconstitutional and further the Financial Intelligence Unit may request the production of information from banks and trust companies without a court order.

A copy of the judgment of the Supreme Court and the Court of Appeal is attached to this Report.

It is submitted that the Financial Intelligence Unit has the power to freeze funds believed to be funds used in the financing of terrorism.

The draft Anti-Terrorism Bill provides for the freezing of funds by the Supreme Court where it is satisfied on the application of the Attorney General that a person has been charged or is about to be charged with an offence under the Act; or a request has been made by the appropriate authority of another state in respect of a person who has been charged or is about to be charged with an offence in respect of an act described in the Act or in respect of whom there is reasonable suspicion that the person has committed an offence.

The application for the freezing order is made ex parte and accompanied by an affidavit stating inter alia, the grounds for believing that the funds are related to or are used to facilitate an offence and that the funds are subject

to the effective control of that person. Where an application for a freezing order is made as a result of a request from another State, the Court shall not make an order unless it is satisfied that reciprocal arrangements exist between The Bahamas and that other State whereby that other state is empowered to make a similar order in respect of a request for a freezing order from The Bahamas.

A freezing order when made shall cease to have effect at the end of the period of six months but it may be renewed for a further period of six months but shall not exceed the period of eighteen months in total.

1(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

Financial institutions, businesses and entities are required to make a report to the competent Bahamian Authorities when there is a suspicion that funds may be linked to, related to or are to be used for terrorism, terrorist acts or by terrorist organizations.

Under the provisions of the Financial Transactions Reporting Act and the Regulations made thereunder, financial institutions have an obligation to know their customers and as a part of this process to know the source of their funds. Financial institutions are required to obtain all the necessary information before opening facilities and also to verify this information with existing customers.

Additionally, the proposed Anti-Terrorism Bill will designate the financing of terrorist activities as a predicate offence for money laundering statutes and financial institutions will be obligated to report funds suspected to be linked to, related to or to be used for terrorism acts or by terrorist organizations.

Provisions to criminalize fundraising by nationals for financing of terrorism are also included in the draft Anti-Terrorism Bill.

The International Business Companies Act 2000 prohibits the issuing of bearer shares. Additionally, the Act provides for the register of members to be kept at the registered office of the company or with a registered agent. Further, **the Financial and Corporate Service Providers Act** provides for the registration of all financial service providers. Financial service providers have been defined to include persons who are in the business of incorporating or providing directors for international business companies. Financial service providers have to comply with the provisions of the Financial Transactions Reporting Act and must have on file the name and beneficial owners of all its clients. The Inspector of Financial and Corporate Service Providers has the power to carry out an inspection on an annual basis to ensure compliance with the provisions of the Act.

The Financial Transactions Reporting Act established a Compliance Commission whose function is to regulate and supervise those financial institutions under the Act, who were not otherwise supervised, to ensure their compliance with the provisions in the Act. The Compliance Commission supervises attorneys, accountants, real estate brokers, cooperatives.

PARAGRAPH 2: DECIDES ALSO THAT ALL STATES SHALL

2(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

The Bahamas has never been a haven or training ground for terrorists. There are legislative provisions in place to ensure public safety and order. Additionally, the Bahamas does not have the right to bear arms enshrined in its

constitution. The Firearms Act regulates the licensing and possession of firearms and there is a section of the Police Force that deals with the investigation, seizure and confiscation of illegal firearms.

The Bahamas is committed to the fight against the illicit traffic in firearms. To this end, the Bahamas has signed the Inter-American Convention on the Illicit Manufacture and Trafficking in Weapons, Munitions, Explosives and Related Materials (1997).

The Bahamas has signed the United Nations Convention on Transnational Organized Crime. Officials at the Ministry of Foreign Affairs and the Office of the Attorney General are reviewing the convention for ratification and implementation.

There is a close working relationship between the law enforcement agencies in The Bahamas and the United States in the area of firearms trafficking.

Additionally, **the Penal Code** specifically provides penalties for offences that promote terrorist activities.

Section 403 of the Penal Code provides that if any person is within The Bahamas obtaining or attempting to obtain recruits for the service of any foreign state in any capacity, the Governor General may by Order either prohibit such person from so doing, or permit him to do so subject to any conditions which the Governor General thinks fit to impose. Any person found guilty of the provision of this section by inducing, or attempting to induce any person to accept or agree to accept, or to proceed to any place with a view to obtaining any commission or employment in the service of any foreign state; or knowingly aids in the engagement of any person so induced by forwarding or conveying him or by advancing money or in any way whatever; shall be liable to imprisonment for seven years, or to a fine to such amount as the court thinks fit or both.

Further section 405 of the Penal Code provides that any person who

(a) Meets, or is together with, two or more persons any one or more of whom is armed with any explosives, firearm or other offensive weapons or dressed in uniform or with accoutrements of a military nature; or
(b) Meets or is together with, two or more persons for military training or exercise; or
(c) Collects, stores or distributes explosives, firearms or other offensive weapons or dressed in uniform or with accoutrements of a military nature;

in such circumstances as to give rise to reasonable suspicion that his purpose is to coerce the Government of The Bahamas, or the Government of any other country of the Commonwealth or the Government of any foreign state with which Her Majesty is at peace, or to make or facilitate an invasion of an armed attack upon the territories of any such country of the Commonwealth or foreign State, and fails to satisfy the court that such was not his purpose, shall be liable to imprisonment for a term not exceeding twenty years.

The Constitution of The Bahamas guarantees certain fundamental rights and freedom of the individual, which includes the freedom of conscience, freedom of expression, freedom of assembly and association, and freedom of movement. These fundamental rights however are subject to the interest of defence, public safety, public order, public morality or public health.

The draft Anti-Terrorism Bill creates an offence for

- Soliciting and giving support to terrorist groups or for terrorist acts;
- Harbouring of persons committing terrorist acts;
- Provision of training and instruction to terrorist groups and persons committing terrorists acts.

The penalty for these offences is imprisonment for twenty years.

2(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other states by exchange of information.

The Law Enforcement Agencies have an institutional framework in which information is shared. The Royal Bahamas Police Force is a member of INTERPOL and has a unit that deals with requests from INTERPOL. Any information with respect to terrorists and their connection in The Bahamas would be disseminated through INTERPOL to the Commissioner of Police. The Royal Bahamas Police Force has not received any information of any terrorists entering The Bahamas.

Additionally, the Commissioner of Police is a member of the Association of Caribbean Commissioners of Police. This Association meets annually and discusses security and terrorism matters and other matters of mutual interest to the security forces in the Caribbean. The Commissioner of Police of The Bahamas, Mr. Paul Farquharson is presently the Vice President of the Association.

The Royal Bahamas Defence Force is a member of the Caribbean Information Sharing Network (CISN), which is a multilateral internet-based network, used by Caribbean and United States military and law enforcement agencies to share information on transnational issues and threats of common concern. The network was established in 1998 in Jamaica by the Caribbean Security Chiefs and offers a collaborative approach to address regional issues. The Caribbean Nations Security Conference (CANSEC) held in Nassau, The Bahamas in March 2000 adopted the Charter. There was a recent conference of CISN in Nassau in March 2003.

The Royal Bahamas Police Force, in conjunction with the Airport Authority, has responsibility for the security of the Nassau International Airport. Security procedures at Nassau International Airport are FAA approved. The improvement of security at all ports of entry is a priority of the Government. The Royal Bahamas Police Force has a unit attached to the Nassau International Airport that uses specially trained canines that are a part of the security patrol.

There are airports and ports on every inhabited island in The Bahamas. Police, customs and immigration officers are stationed at these airports and ports. Most of these islands are authorized ports of entry and persons entering The Bahamas has to clear customs and immigration at the nearest port on entering The Bahamas. If a visitor is cruising The Bahamas on a boat he must first obtain a cruising permit from the Comptroller of Customs.

The Grand Bahama Port Authority owns the Airport and Seaport at Freeport in the Island of Grand Bahama. They are responsible for security measures at the airport and the seaport with the Assistance of the Royal Bahamas Police Force. The security procedures at Grand Ba ıama International Airport are FAA approved. Customs and immigration officers and police officers are stationed at the airport and seaport.

There are United States Pre-clearance facilities at the Nassau International Airport and the Grand Bahama International Airport under the Agreement on Pre-clearance signed on the twenty-third day of April 1974 between the Government of the United States of America and the Government of The Bahamas concerning the establishment and operation of pre-clearance facilities in The Bahamas. The implementing legislation for this Agreement is the **United States of America and The Bahamas Pre-clearance Agreement Act**. Under these provisions persons travelling from The Bahamas to the United States of America pre-clear United States Customs and Immigration in Nassau and Freeport. The Pre-clearance Agreement also provides for a declaration where any person is in possession of more than $10,000.00 in cash or negotiable instruments. Failure to declare shall result in the forfeiture of the funds.

The United States Customs and Immigration officers do not have the power of arrest and are assisted by officers from the Royal Bahamas Police Force. Arrests have been made at the Nassau International Airport and the Grand Bahama International Airport with respect to drug trafficking and violation of currency restrictions.

The Commissioner of Police is in regular dialogue with the Commodore of the Defence Force, the Department of Immigration and the Comptroller of Customs with respect to security matters.

Additionally, **the Mutual Legal Assistance (Criminal Matters) Act 1988** provides for requests for assistance in criminal matters with countries with which The Bahamas has signed Mutual Legal Assistance Treaties. The Bahamas has Mutual Legal Assistance in Criminal Matters Treaties with the United States and Canada and with the United Kingdom in respect of drug trafficking matters only. This allows competent Authorities in these states to obtain relevant information from the competent authority in The Bahamas in relation to criminal proceedings.

With respect to other countries, assistance is provided through the provisions of the Criminal Justice (International Cooperation) Act 2000.

To ensure that The Bahamas' financial services sector complies with the highest standards of conduct and probity, The Bahamas is determined not to be seen as a haven for fugitives from justice. Therefore The Bahamas is able under the provisions of the **Extradition Act 1994** to extradite persons found to be in The Bahamas accused of extraditable offences in foreign jurisdictions. The Bahamas has bilateral extradition treaties with twenty- two (22) countries and is a party to the Commonwealth Scheme with respect to Commonwealth countries. The Extradition Act (No. 8 of 1994), the Extradition (Application to Foreign States) Order, 1994 (S.I. No. 74 of 1994) the Extradition (Designated Commonwealth Countries) Order, 1994 (S.I. No. 75 of 1994), enables extradition to take place between The Bahamas and an approved State in respect of those offences considered under the legislation to be extraditable offences. An approved state could be a member of the Commonwealth or a non-Commonwealth country with which The Bahamas has an extradition treaty or agreement.

The Bahamas has extradited persons to the United States of America to face charges of drug trafficking and other serious offences and has also extradited one person accused of fraud to Switzerland. There are pending applications for extradition before the Magistrates Court in The Bahamas and one appeal pending to the Judicial Committee of Her Majesty's Privy Council. There has been no request for extradition of any person accused of terrorism or any terrorist related offences.

*2(c) **Deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens.***

The Anti-Terrorism Bill, when enacted, would provide a penalty of twenty years for harbouring or concealing of persons or preventing, hindering or interfering with the apprehension of any other person knowing, or having reason to believe, that such other person has committed or is planning, or is likely to commit, a terrorist act; or is a member of a terrorist group.

Under the **Immigration Act** no person shall land in The Bahamas from any place outside or embark in the Bahamas from any destination outside The Bahamas, save with the leave of any immigration officer and elsewhere than at an authorized port or at such other place as an immigration officer may allow.

Additionally, there are administrative and legislative arrangements, which allow for persons to be placed on a national stop list. A person's name is entered on the stop list where the Board is satisfied that any person who is not a citizen of The Bahamas or a permanent resident and who is for the time being outside The Bahamas, is a person who has, while in The Bahamas conducted himself in a manner which is undesirable; or is a person whose landing in The Bahamas appears undesirable in view of information or advice received from any source which the Board considers reliable. In the event that a person has entered The Bahamas they can be subject to deportation.

The names of persons suspected of being terrorists or involved in terrorism as contained in lists issued from time to time have been forwarded to the Board and these persons are placed on the stop list.

Under the provisions of the Financial Intelligence Unit Act and the Guidelines issued to the financial services industry and the Financial Transactions Reporting Act, financial institutions should not accept any funds belonging to known terrorists.

2(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens.

The draft Anti-Terrorism Bill creates an offence for the provision of services for the commission of terrorist acts; the use of property for commission of terrorist acts and soliciting and giving of support to terrorist groups or for the commission of a terrorist acts. The penalty for breach of these provisions is twenty years imprisonment.

Additionally, the draft Anti-Terrorism Act provides that where a person who has committed or is alleged to have committed an offence under the Act is present in The Bahamas and it is not intended to extradite that person, the Attorney General shall prosecute that person for the offence. The draft Bill now provides for terrorist offences to be extraditable.

The draft Bill gives jurisdiction to The Bahamas to commence proceedings in The Bahamas where the offence was committed by a citizen of The Bahamas or was directed towards or resulted in the carrying out of an offence under the Act in The Bahamas or against a national of The Bahamas.

The provisions of the financial services legislation would prevent The Bahamas from being used in the financing of terrorist activities.

2(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.

The Penal Code makes provision for offences that may arise in the context of terrorism, inter alia, murder, threats of death or grievous harm, kidnapping, unlawful training, military operations, violence against judges, magistrates, jurors and witnesses in legal proceedings and causing damage to property i.e. arson, the use of explosive matter with intent to cause damage and damage to buildings. These offences carry penalty ranging from seven years to death. The death penalty is still the sentence for any person convicted of murder, treason or genocide in The Bahamas.

The draft Anti-Terrorism Bill will further criminalize the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts in domestic law.

2(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings related to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings.

Requests for assistance in criminal matters may be made to the Attorney General as the competent authority under the Mutual Assistance (Criminal Matters) Act and the Mutual Legal Assistance Treaties in force with the United States of America and Canada. The Criminal Justice (International Cooperation) Act 2000, allows for assistance in providing information and other documents as it relates to investigations, inquiries and proceedings relating to the financing of terrorism, of terrorist acts and of terrorist organizations.

In 2002, The Bahamas received sixty six (66) requests for assistance in criminal matters through the MLAT treaties and under the Criminal Justice (International Cooperation) Act 2000. Some of these matters have been completed and others are in various stages of completion. None of these matters relate to terrorism or terrorism financing.

Cooperation in providing assistance may be obtained through the regulatory process through the Central Bank of The Bahamas, the Securities Commission, the Registrar of Insurance Companies and the Inspector of Banks and Trust Companies. These supervisory entities may exchange information with their foreign counterparts to enable the overseas regulatory authority to exercise regulatory functions including the conduct of civil or administrative

investigations and proceedings to enforce laws, regulations and rules administered by that authority. These provisions may be used by the regulatory authorities to exchange information when there is an investigation with respect to allegations of terrorist funds being held in any financial institution in The Bahamas.

Additionally, the Royal Bahamas Police Force is a member of INTERPOL and regularly receives requests for assistance through this channel.

The Bahamas Customs Department has recently commissioned an X-ray machine, which is used mainly at the Nassau International Airport. This X-Ray machine is portable and may be moved to any port or customs depot to scan cargo as the need arises.

The Bahamas Customs Department is a member of the World Customs Organization (WCO) and the Caribbean Customs Law Enforcement Council (CCLEC). Both organizations exchange information and intelligence worldwide.

2(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

The Immigration Act and Regulations of The Bahamas provide for the restriction of entry into the Bahamas of any known or suspected terrorist or terrorist groups.

There are administrative and legislative arrangements that allow for persons to be placed on a national stop list. This would result in the person not being able to enter The Bahamas. The legislative instrument, which governs such powers, is the Immigration Act. Immigration authorities regularly update the Watch List as information on the consolidated list issued by the Security Council in accordance with resolutions 1267 (1999), 1333 (2000) and 1390 (2002) is updated. Additionally, Bahamas Immigration authorities receive regular briefings from the US security agencies and are able to obtain information from the US Immigration database as and when needed as a result of the US Pre-clearance facilities that exist in The Bahamas.

While The Bahamas allows nationals from countries with which it has visa abolition agreements, as well as nationals from certain Commonwealth countries who are exempt from obtaining a visa, to travel to the country without a Bahamian issued visa, Immigration Officers have the final authority to deny entry to persons whom he/she considers not to have a legitimate reason for entry into The Bahamas.

In addition, negotiations are underway to acquire the necessary equipment to upgrade to ICAO standards for machine-readable passports. This process is expected to be completed in 2003.

The Passport Act Chapter 180 of the Revised Statute Law of The Bahamas regulates the issuance of Passports and other matters incidental thereto. This Act provides for strict screening procedures in relation to passport issuance to ensure that the Minister responsible for Passports only issues Bahamian passports and travel documents to Bahamian citizens. Every application for an ordinary passport shall be authenticated and sponsored by a marriage officer, a medical practitioner, a counsel and attorney of the Supreme Court, a public officer of or above the rank of assistant head of a department, a bank officer, magistrate, or justice of the peace who has been personally acquainted with the applicant for at least two years and is not a member of the immediate family of the applicant.

Copies of a recent photograph of the applicant duly authenticated as indicated above, must accompany every passport application and the applicant must produce proof of citizenship. A person born in The Bahamas after independence is not automatically a citizen of The Bahamas unless one parent is a citizen of The Bahamas. Passport officers personally interview persons applying for a passport for the first time.

Whoever forges any passport or makes any statement which is to his knowledge untrue for the purposes of procuring a passport whether for himself or for any other person is guilty of an offence and liable on summary conviction to a fine not exceeding three hundred dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

The printing and storage of passports are done in a secure environment. Where there is doubt or reasonable suspicion with respect to an application for a passport the application is referred to the Ministry of Foreign Affairs and the Office of the Attorney General.

PARAGRAPH 3DECIDES THAT ALL STATES SHALL

3(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movement of terrorist persons or networks: forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups

The improvement of intelligence gathering is also a key priority of all law enforcement agencies in the Bahamas. Wire-tapping and interception of signals and screening of electronic messages is permitted under the provisions of the **Listening Devices Act.**

Under this Act where the Minister responsible for National Security is satisfied that the interests of the defence or the internal security of The Bahamas so require, he may in writing authorize the use by any person specified in the authorization of a listening device for such period (not exceeding thirty days) and in such manner as may be specified.

Where the Commissioner of Police, after consultation with the Attorney General is satisfied: –

(a) That for the purpose of the conduct by a police officer of an investigation into an offence that has been committed or that the Commissioner believes to have committed, the use of a listening device is necessary; or

(b) That an offence is about to be, or is reasonably likely to be, committed and that, for the purpose of enabling a police officer to obtain evidence of the commission of the offence or the identity of the offender, the use of a listening device is necessary.

The Commissioner after consultation with the Attorney General, may in writing authorize the use by a police officer of a listening device for that purpose in such manner and for such period (not exceeding fourteen days) as may be specified in the authorization.

The Royal Bahamas Police Force may use the provisions of the Listening Devices Act as a tool in identifying persons alleged to be involved in terrorist activities.

The Listening Devices Act prohibits the use of listening devices and prohibits the communication of private conversations recorded by listening devices otherwise than in accordance with the provisions of this Act. Any person convicted of an offence under this Act shall be liable to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Law enforcement agencies in The Bahamas enjoy a high degree of cooperation with neighbouring countries and a number of bilateral agreements exist between the United States of America and The Bahamas in relation to interdiction of drugs which could also facilitate exchanges in relation to terrorism matters.

3(b) Exchange information in accordance with international and domestic law and cooperate in judicial matters to prevent the commission of terrorist acts.

This has been dealt with in paragraph 2(f).

3(c) Cooperate particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts

The Bahamas has consistently supported the work of the General Assembly and Security Council in all areas of its activities and in the area of counter terrorism in particular.

The Bahamas is a member of the Caribbean Financial Action Task Force (CFATF) the regional FATF styled organization. The Attorney General of The Bahamas is presently the Chair of the Caribbean Financial Action Task Force, a position he assumed in October 2002.

As a result of the Financial Action Force (FATF) Special Meeting on the Financing of Terrorism held in Washington, D. C. on 29 and 30 October 2001, the FATF expanded its mission beyond money laundering and agreed to Eight Special Recommendations on Terrorist Financing and also agreed to a Comprehensive Plan of Action. CFATF endorsed the Eight Special Recommendations on Terrorist Financing at its Ministerial Meeting in October 2002 in The Bahamas.

The Bahamas and other members of the Caribbean Financial Action Task Force (CFATF) took part in the FATF self-assessment exercise on terrorism financing.

The Bahamas is a member of the Inter-American Committee Against Terrorism (CICTE) and has signed the Inter-American Convention Against Terrorism in July 2002. The Bahamas is also represented at Ministerial level on the Commonwealth Committee Against Terrorism.

Between 23–24 January 2003 the Royal Bahamas Police Force sponsored a conclave on Terrorism. Participants of this conclave included law enforcement and civilian personnel from the United States of America, Canada and the Caribbean.

3(d) Become party as soon as possible to the relevant international conventions and protocols related to terrorism including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

The Bahamas is a states party to five of the twelve major terrorist related United Nations Conventions, which are as follows:

1. Convention on Offences and Certain Other Acts committed on Board Aircraft, 1963;
2. Convention for the Suppression of Unlawful Seizure of Aircraft 1970;
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971;
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973;
5. International Convention Against the Taking of Hostages 1979.

The Government of The Bahamas is also a signatory to the International Convention for the Suppression of the Financing of Terrorism. The Government of The Bahamas has not yet ratified this convention. Ratification of this convention and becoming a party to the other conventions are under active consideration by the Government of The Bahamas.

3(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

The Bahamas has fully implemented the Conventions to which it is a party as stated in paragraph 3(e) above and has enacted domestic legislation to give effect to the provisions of the Conventions. The Government of the Bahamas is giving consideration to becoming party to the other relevant conventions and protocols relating to terrorism.

3(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;

The Government of The Bahamas is a party to the **1951 Convention and Protocol relating to the Status of Refugees**. This convention excludes persons from obtaining refugee status if they have been involved in serious non-political crimes or acts against the purpose and principles of the United Nations.

Officials at the Ministry of Foreign Affairs and the Department of Immigration are trained in the UNHCR refugee determination procedure. When immigrants make a claim for refugee status they are requested to complete a form that contains pertinent information about that person. The applicant is then interviewed to determine if there is a refugee claim. A representative from UNHCR is usually involved in the process of determining if the claim for refugee status is valid. Where the determination is positive the Ministry of Foreign Affairs is advised and the matter is further referred to Cabinet for consideration and final determination. When the Cabinet approves the request for refugee status, the applicant is informed and given the necessary documents to prove his refugee status.

The Government of The Bahamas has granted refugee status to persons. However, persons involved in acts of terrorism would be excluded from obtaining refugee status in The Bahamas.

3(g) Ensure in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitator of terrorist acts and that claims of political motivation are not required as grounds for refusing requests for the extradition of alleged terrorists.

Article 33 (2) of the 1951 Convention and Protocol relating to the Status of Refugees allows for the removal of persons who have obtained refugee status and who subsequently engage in very serious crimes and if they constitute a danger to the security of The Bahamas to be removed to their country of origin even if they fear persecution there.

The draft Anti-Terrorism Bill would provide for the extradition of persons alleged to have committed terrorist acts.

Paragraph 4 notes with concern the close connection with international terrorism and transnational organized crime, illicit drugs, money laundering, illegal arms trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasises the need to enhance coordination of efforts on national, sub-regional and international levels in order to strengthen a global response to this serious challenge and threat to international security.

The Bahamas was the first country to ratify the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Bahamas has signed the United Nations Convention on Transnational Organized Crime and is considering ratifying the same in the very near future.

The Bahamas is also party to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons; the 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America and the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

The Bahamas has also signed the 1993 Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction.

The Bahamas is a nuclear free state and has never produced or used chemical and or biological weapons and is opposed to the use of these materials.

The Government of The Bahamas has received useful comments on the terrorism legislation from Law Ministers of the Commonwealth at the recent Commonwealth Law Ministers meeting which was held in St Vincent and the Grenadines in November 2002.

Two legal officers from the Office of the Attorney General who are involved in the drafting of the legislation on terrorism attended a workshop on Terrorism and the Implementation of United Nations Security Council resolution 1373 (2001) in Antigua and Barbuda during the week of 10 February 2003. The Commonwealth Secretariat sponsored this workshop. Attendance at this workshop assisted the legislative drafters in their consideration of the draft Terrorism Bill.

The Bahamas is a member of regional and international organizations, which deals with international security issues as a part of their mandate. These organizations include-

- The United Nations;
- The Commonwealth;
- The Organization of American States (OAS);
- Caricom;
- The Caribbean Financial Action Force (CFATF)
- The World Bank;
- The International Monetary Fund.

Technical Assistance

There is a need in The Bahamas for training of police officers in the detection and investigation of terrorist offences and investigation of matters of terrorism financing.

The Office of the Attorney General desires technical assistance in the training of prosecutors in the prosecution of terrorist offences; and the freezing and forfeiture of funds of terrorists.

There is also the need for participation in workshops and training courses dealing with the detection of terrorism funds and the investigation of terrorism offences by police officers, prosecutors and officials at the Financial Intelligence Unit.

Financial assistance is required to assist in acquiring equipment to produce machine-readable passports.

CONCLUSION

The Bahamas remains firmly committed in the fight against terrorism and in support of resolutions by international organizations such as the United Nations aimed at the elimination of acts of terrorism and the financing of terrorism. It is expected that, with the entry into force of the proposed Anti-Terrorism Act, The Bahamas would have further strengthened its defences against terrorism and would be in a position to provide even more assistance in support of the United Nations resolutions.

ATTACHMENTS

The Constitution of The Bahamas;
The Penal Code;
The Firearms Act;
The Explosives Act,
The Central Bank of The Bahamas Act;
The Financial Intelligence Unit Act;
The Financial Intelligence Unit (Transactions Reporting Regulations);
The Financial Transactions Reporting Act;
The Financial Transactions Reporting Regulations;
The Financial and Corporate Service Providers Act,
The Extradition Act,
The Criminal Justice (International Cooperation) Act ;
The Proceeds of Crime Act;
The Mutual Legal Assistance (Criminal Matters) Act;
The International Business Companies Act;
The Internationally Protected Persons Act;
The Suppression of the Taking of Hostages Act;
The Explosives Substances (Illegal Use and Possession) Act;
The International Obligations (Economic and Ancillary Measures) Act;
The International Obligations (Economic and Ancillary Matters) (Afghanistan) Order 2001;
The Immigration Act;
The Passport Act;
The Listening Devices Act;
The United States of America and The Bahamas Pre-clearance Agreement Act,
The draft Anti-Terrorism Bill.
Financial Clearing Corporation v the Attorney General (Supreme Court);
The Attorney General v Financial Clearing Corporation (Court of Appeal);

N.B All references to laws are to the New Revised Edition of the Laws of The Bahamas, which came into effect on 28 March 2003.